

225.7501 Policy.

Acquire only domestic end products for use outside the United States, and use only domestic construction material for construction to be performed outside the United States, including end products and construction material for foreign military sales, unless—

- (a) Before issuing the solicitation—
 - (1) The estimated cost of the acquisition or the value of a particular construction material is at or below the simplified acquisition threshold;
 - (2) The end product or particular construction material is—
 - (i) Listed in FAR 25.104 or 225.104(a)(iii);
 - (ii) A petroleum product;
 - (iii) A spare part for foreign-manufactured vehicles, equipment, machinery, or systems, provided the acquisition is restricted to the original manufacturer or its supplier in accordance with DoD standardization policy (see DoD Directive 4120.3, Defense Standardization and Specification Program);
 - (iv) An industrial gas; or
 - (v) A brand drug specified by the Defense Medical Materiel Board;
 - (3) The acquisition is covered by the World Trade Organization Government Procurement Agreement;
 - (4) The acquisition of foreign end products or construction material is required by a treaty or executive agreement between governments;
 - (5) The end product is acquired for commissary resale; or
 - (6) The contracting officer determines that a requirement can best be filled by a foreign end product or construction material, including determinations that—
 - (i) A subsistence product is perishable and delivery from the United States would significantly impair the quality at the point of consumption;
 - (ii) An end product or construction material, by its nature or as a practical matter, can best be acquired in the geographic area concerned, e.g., ice or books; or bulk material, such as sand, gravel, or other soil material, stone, concrete masonry units, or fired brick;
 - (iii) A particular domestic construction material is not available;
 - (iv) The cost of domestic construction material would exceed the cost of

foreign construction material by more than 50 percent, calculated on the basis of—

- (A) A particular construction material; or
- (B) The comparative cost of application of the Balance of Payments Program to the total acquisition; or
- (v) Use of a particular domestic construction material is impracticable;
- (b) After receipt of offers—
 - (1) The evaluated low offer (*see* Subpart 225.5) is an offer of an end product that—
 - (i) Is a qualifying country end product;
 - (ii) Is an eligible product; or
 - (iii) Is a nonqualifying country end product, but application of the Balance of Payments Program evaluation factor would not result in award on a domestic offer; or
 - (2) The construction material is an eligible product; or
 - (c) At any time during the acquisition process, the head of the agency determines that it is not in the public interest to apply the restrictions of the Balance of Payments Program to the end product or construction material.

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225.7502 Procedures.

- (a) *Solicitation of offers.* Identify, in the solicitation, supplies and construction material known in advance to be exempt from the Balance of Payments Program.
- (b) *Evaluation of offers.* (1) *Supplies.* Unless the entire acquisition is exempt from the Balance of Payments Program, evaluate offers for supplies that are subject to the Balance of Payments Program using the evaluation procedures in subpart 225.5. However, treatment of duty may differ when delivery is overseas.
 - (i) Duty may not be applicable to nonqualifying country offers.
 - (ii) The U.S. Government cannot guarantee the exemption of duty for components or end products imported into foreign countries.
 - (iii) Foreign governments may impose duties. Evaluate offers including such duties as offered.